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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------------|---------------------|------------------|
| 09/683,249  | 12/05/2001  | Michael John Stephen Austin | S63.2-10014         | 8321             |
| 490   | 7590        | 02/06/2004                  | EXAMINER            |                  |
| VIDAS, ARRETT & STEINKRAUS, P.A.<br>6109 BLUE CIRCLE DRIVE<br>SUITE 2000<br>MINNETONKA, MN 55343-9185 |             |                             | THALER, MICHAEL H   |                  |
|   |             | ART UNIT                    | PAPER NUMBER        |                  |
|   |             | 3731                        |                     |                  |
| DATE MAILED: 02/06/2004   |             |                             |                     |                  |

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Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                       |                                 |
|------------------------------|---------------------------------------|---------------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b>                | <b>Applicant(s)</b>             |
|                              | 09/683,249                            | AUSTIN, MICHAEL JOHN<br>STEPHEN |
|                              | <b>Examiner</b><br><br>Michael Thaler | <b>Art Unit</b><br><br>3731     |

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 January 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-28,30,33 and 36-38 is/are pending in the application.

4a) Of the above claim(s) 4,10-28,30 and 33 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,5-9 and 36-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 14.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Jan. 20, 2004 has been entered.

Claims 4, 10-28, 30 and 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Claim 38 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the original disclosure for the limitation that the self-expanding cells are capable of self-expansion independently of the balloon expandable cells. In other words, the original disclosure nowhere indicates that the

self-expanding cells expand prior to (or independent of) the expansion of the balloon expandable cells by the balloon.

Claims 3 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 contradicts claim 2 since claim 3 indicates that the second self-expanding segment is between the second and third balloon expandable segments while claim 2 indicates that the second self-expanding segment is between the first and second balloon expandable segments. In claim 38, line 8, the exact meaning of "independently" is not clear and is not understood.

Claims 1-3, 5-7, 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Vonesh et al. (WO 00/33770). Vonesh et al., in figure 9, disclose a first balloon expandable segment (e.g. section 56 at the extreme left side of the figure), a second balloon expandable segment (e.g. section 56 at the middle of the figure) and a first self-expanding segment (e.g. the section 58 between the first and second balloon expandable segments). As to claim 2, the sections 56 at the extreme left and right sides of the figure may be considered to be the claimed first and second balloon expandable segments while the two sections 58 may be considered to be the first and

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second self-expanding segments which are between the first and second balloon expandable segments. As to claim 5, the self-expanding cells are provided at intermediate islands 58 which are surrounded (at both sides) by balloon expandable material. As to claim 36, Vonesh et al. disclose a covering (the graft material) which is inherently protective.

Claims 8, 9 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vonesh et al. (WO 00/33770). As to claims 8 and 37, Vonesh et al., in the figure 9 embodiment, fail to disclose more balloon expandable cells than self-expandable cells. However, Vonesh et al., in other embodiments (e.g. figures 6 and 8) teach that the balloon expandable sections 56 may extend for a longer axial distance than the self-expandable sections 58. This arrangement has the advantage of providing a specific flow characteristic as described on page 17, lines 3-9. It would have been obvious to lengthen the balloon expandable sections 56 in the figure 9 embodiment so that it too would have this advantage.

Claim 38 is rejected under 35 U.S.C. 102(e) as being anticipated by Vrba (6,168,321). Vrba, in figure 1, discloses a first balloon expandable segment (e.g. one of the cylindrical segments that make up part 14), a second balloon expandable segment (another one of the cylindrical segments that make up

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part 14) and a first self-expanding segment 12 wherein the self-expanding cells are capable of self-expansion independently of the balloon expandable cells (col. 2, lines 23-26).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
2/4/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731